

REMARKS

This responds to the Office Action mailed on April 18, 2006.

Claims 1-27, 28, and 30 are amended, no claims are canceled, and no claims are added; as a result, claims 1-34 are now pending in this application. The amendments to the claims are fully supported by the specification as originally filed. No new matter is introduced. Applicant respectfully requests reconsideration of the above-identified application in view of the amendments above and the remarks that follow.

Support for the amendments to the claims may be found in the specification, for example, on page 5, lines 16-18 and on page 20, lines 8-13. In addition, support for the amendments to claims 1, 4, 21, and 22 may be found in the specification, for example, on page 6, lines 20 - page 7, line 14.

In the Title

The title is amended in line with the claims of the instant application. No new matter is introduced.

In the Specification

The specification is amended to correct typographical errors. No new matter is introduced.

First §102 Rejection of the Claims

Claims 19-24, 26, and 27 were rejected under 35 U.S.C. § 102(e) for anticipation by LaFollette et al. (US 6,610,440). Applicant traverses these grounds of rejection of these claims.

Applicant reserves the right to swear behind LaFollette et al. (hereafter) at a later date.

Claim 19 is amended to include features of original claims 1 and 7. Applicant cannot find in LaFollette a disclosure, a teaching, or a suggestion of a hearing aid having a battery with a plurality of voltage taps as recited in amended claim 19. Therefore, Applicant submits that claim 19 is patentable over LaFollette. Since claims 20-24, 26, and 27 depend on claim 19, Applicant submits that claims 20-24, 26, and 27 are patentable over LaFollette for at least the reasons stated above with respect to claim 19.

Applicant respectfully requests withdrawal of these rejections of claims 19-24, 26, and 27, and reconsideration and allowance of these claims.

Second §102 Rejection of the Claims

Claims 19, 21, and 25 were rejected under 35 U.S.C. § 102(b) for anticipation by Cohen et al. (US 4,204,036). Applicant traverses these grounds of rejection of these claims.

Claim 19 is amended to include features of original claims 1 and 7. Applicant cannot find in Cohen et al. (hereafter Cohen) a disclosure, a teaching, or a suggestion of a hearing aid having a battery with a plurality of voltage taps as recited in amended claim 19. Therefore, Applicant submits that claim 19 is patentable over Cohen. Since claims 21 and 25 depend on claim 19, Applicant submits that claims 21 and 25 are patentable over Cohen for at least the reasons stated above with respect to claim 19.

Applicant respectfully requests withdrawal of these rejections of claims 19, 21, and 25, and reconsideration and allowance of these claims.

First §103 Rejection of the Claims

Claims 1-7, 10, and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Penn (US 2,140,969) in view of Cohen et al. (US 4,204,036). Applicant traverses these grounds of rejection of these claims.

Claim 7 is amended to include the features of claim 1. Claim 1 is amended to depend on claim 7. Applicant cannot find in the combination of Penn and Cohen, as proffered in the Office Action, a teaching or suggestion of a hearing having a plurality of electronic devices where the electronic devices are configured to operate under a different supply voltage provided from a single supply source having multiple voltage taps with the electronic devices and single supply source configured in a housing to be worn in or about an ear of a person as recited in amended claim 7. Penn deals with a hearing aid apparatus having vacuum tubes and a transformer, where the transformer has an "extremely small" size of 1.2 inches wide by 1.1 inches high by 1.0 inch thick (*See, Penn, column 2, lines 19-23*). Cohen deals with a battery providing different voltages that may be used in portable electronic devices such as a hand held calculator (*See, Cohen, Abstract and column 1, lines 4-50*). Applicant cannot find in the combination of Penn and Cohen

a teaching or a suggestion of a hearing aid with a miniaturized housing for use in locations having limited space. Therefore, Applicant submits that the combination of Penn and Cohen does not teach or suggest all the elements of claim 7 and that claim 7 is patentable over Penn in view of Cohen.

Claims 1-6, 10, and 16 depend on claim 7. Therefore, Applicant submits that claims 1-6, 10, and 16 are patentable over Penn in view of Cohen for at least the reasons discussed above with respect to claim 7.

Applicant respectfully requests withdrawal of these rejections of claims 1-7, 10, and 16, and reconsideration and allowance of these claims.

Second §103 Rejection of the Claims

Claims 12, 14, 17, and 18 rejected under 35 U.S.C. § 103(a) as being unpatentable over Penn (US 2,140,969) in view of Cohen et al. (US 4,204,036) and further in view of Saaski et al. (US 6,310,960). Applicant traverses these grounds of rejection of these claims.

Applicant submits that the combination of Saaski with Penn and Cohen, as proffered in the Office Action, does not cure the deficiencies of citing Penn and Cohen with respect to claim 7. Therefore, Applicant submits that claim 7 is patentable over Penn in view of Cohen and further in view of Saaski for at least the reasons stated above with respect to claim 7. Since claims 12, 14, 17, and 18 depend on claim 7, Applicant submits that claims 12, 14, 17, and 18 are patentable over Penn in view of Cohen and further in view of Saaski for at least the reasons stated above with respect to claim 7.

Applicant respectfully requests withdrawal of these rejections of claims 12, 14, 17, and 18, and reconsideration and allowance of these claims.

Third §103 Rejection of the Claims

Claims 28-33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Penn (US 2,140,969) in view of Cohen et al. (US 4,204,036) and further in view of Panitzsch (US 2002/0043709). Applicant traverses these grounds of rejection of these claims.

Applicant reserves the right to swear behind Panitzsch at a later date.

According to *M.P.E.P.* § 2141, which cites *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986), the following tenets of patent law must be adhered to when applying 35 U.S.C. § 103. First, the claimed invention must be considered as a whole. Second, the references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination. Third, the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention. Fourth, obviousness is determined using a reasonable expectation of success standard. Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. *M.P.E.P.* § 2141 (citing *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966)).

Applicant submits that there is not a reasonable expectation of success in the combination of Penn, Cohen, and Panitzsch as proffered in the Office Action. Penn deals with a hearing aid apparatus having vacuum tubes and a transformer, where the transformer has an “extremely small” size of 1.2 inches wide by 1.1 inches high by 1.0 inch thick (*See, Penn, column 2, lines 19-23*). Cohen deals with a battery providing different voltages that may be used in portable electronic devices such as a hand held calculator (*See, Cohen, Abstract and column 1, lines 4-50*). Panitzsch deals with a behind the ear hearing aid that uses a rechargeable battery (*See, Panitzsch, page 2, paragraphs [0019] – [0021]*). Applicant cannot find in Cohen a teaching or a suggestion that the battery of Cohen can be used in a hearing aid worn in or about a person’s ear. Further, Applicant cannot find in the cited references or in the Office Action an objective basis that teaches or suggests that there is a reasonable expectation of success for the Penn hearing apparatus using the Cohen battery to be housed in a hearing aid as taught by Panitzsch.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Appellant’s disclosure. *M.P.E.P.* § 2142 (citing *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)). Therefore, Applicant submits that the combination of Penn, Cohen, and Panitzsch, as proffered in the Office Action, does not establish a proper *prima facie* case of obviousness with respect to claim 28. Thus, Applicant submits that claim 28 is patentable over Penn in view of Cohen and further in view of Panitzsch. Since claims 29-33 depend on claim 28, Applicant

submits that claims 29-33 are patentable over Penn in view of Cohen and further in view of Panitzsch for at least the reasons stated above with respect to claim 28.

Applicant respectfully requests withdrawal of these rejections of claims 28-33, and reconsideration and allowance of these claims.

Fourth §103 Rejection of the Claims

Claim 34 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Penn in view of Cohen et al. in view of Panitzsch and further in view of Saaski. Applicant traverses these grounds of rejection of these claims.

Applicant submits that the combination of Saaski with Penn, Cohen, and Panitzsch, as proffered in the Office Action, does not cure the deficiencies of citing Penn, Cohen, and Panitzsch with respect to claim 28. Therefore, Applicant submits that claim 28 is patentable over Penn in view of Cohen in view of Panitzsch and further in view of Saaski for at least the reasons stated herein. Since claim 34 depends on claim 28, Applicant submits that claim 34 is patentable over Penn in view of Cohen in view of Panitzsch and further in view of Saaski for at least the reasons stated above with respect to claim 28.

Applicant respectfully requests withdrawal of these rejections of claim 34, and reconsideration and allowance of this claim.

Allowable Subject Matter

Claims 8, 9, 11, 13 and 15 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The Office Action makes assertions regarding claims 8, 9, 11, 13 and 15 and the contents of the art. Applicant respectfully submits that the relevant claims may be allowable for one or more reasons in addition to and/or in alternative to those reasons identified in the Office Action. Applicant reserves the right to further address one or more aspects of these statements in the Office Action as may later be necessary or desirable.

Applicant submits that claim 7 is patentable over the cited art of record for at least the reasons stated herein. Claims 8, 9, 11, 13 and 15 depend on claim 7 and, therefore, Applicant submits that claims 8, 9, 11, 13 and 15 are in condition for allowance.

Applicant respectfully requests withdrawal of these objections of claims 8, 9, 11, 13 and 15, and reconsideration and allowance of these claims.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 371-2157 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By their Representatives,

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Date 18 July 2006

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 18 day of July 2006.

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Signature